

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

ISAIAH CLIFTON GAINES,

Defendant and Appellant.

A155375

(Alameda County
Super. Ct. No. 18-CR-000304)

Isaiah Clifton Gaines appeals from a judgment entered after he pleaded no contest to one count of assault with force likely to produce great bodily injury (Pen. Code, § 245, subd. (a)(4)).¹ Defendant’s court-appointed counsel has filed a brief seeking our independent review of the record, pursuant to *People v. Wende* (1979) 25 Cal.3d 436, to determine whether there are any arguable issues for review. Defendant has been informed of his right to file supplemental briefing, and he has not done so. After our independent review of the record, we find no errors or other issues requiring further briefing, and we affirm.

On December 24, 2017, the Oakland Police Department responded to a room at the Marriott Hotel in Oakland after receiving a 911 call that someone was being held against her will and sexually assaulted. An Oakland Police Department officer knocked on the door and announced that he was “Oakland Police.” Defendant answered the door.

¹ All statutory references are to the Penal Code.

The victim was lying on the bed and, in response to the officer's question, said she was being held against her will. She said that defendant had forced her to orally copulate him and that her face hurt. Later, at Highland Hospital, she later gave a full written statement alleging violent acts by defendant.

Based on defendant's alleged conduct on December 23 and 24, 2017, defendant was arrested and eventually charged with five felonies: forcible rape (count 1, § 261, subd. (a)(2)), attempted sodomy by use of force (count 2, § 286, subd. (c)(2)(A)), two counts of forcible oral copulation (counts 3 and 5, § 288a, subd. (c)(2)(a)), and false imprisonment by violence (count 4, § 236). It was further specially alleged that defendant came within the purview of section 667.6, subdivision (c) and (d) and that four of the alleged violations were violent felonies under section 667.5, subdivision (c).

Defendant declined referral to the public defender and requested to represent himself, which request was granted. Defendant's written waiver form indicates that he had represented himself "6 times total" before, "3 matters felony, 3 matters misdemeanor," "All State of CA v. me."

Defendant represented himself throughout the proceedings in the trial court, including the preliminary hearing on February 27, 2018, where he cross-examined the People's witness. He filed multiple pretrial motions, including motions to set aside the information, non-statutory motions to dismiss, and a "motion to dismiss for denial of due process." A private investigator was appointed to assist defendant three weeks before the trial.

On May 4, 2018, while the trial was already underway, the parties reached a negotiated disposition. Per the agreement, defendant pleaded no contest to two felony counts of violating section 245, subdivision (a)(4), as lesser included offenses of counts 1 and 2 of the Information, on the agreement that he would immediately be released from custody, the remaining counts would be dismissed, he would be sentenced to a probationary term with credit for time served, and one of the section 245, subdivision (a)(4) counts would be dismissed at the time of sentencing if defendant showed up for

sentencing on the date ordered.² The prosecution agreed that if defendant successfully completed probation, it would not oppose a motion under section 17, subdivision (b) to reduce the felony to a misdemeanor, and the court explained at length how if the felony was reduced to a misdemeanor, defendant could eventually petition to withdraw his plea of guilty under section 1203.4. As part of the plea agreement, defendant waived his right to appeal.

Defendant was sentenced on July 26, 2018, to the agreed upon sentence. He was placed on three years probation with credit for time served of 182 days in the county jail, credit for time served (91 actual days, 91 good time), plus various terms and conditions of probation. The second count of section 245, subdivision (a)(4) was dismissed. At the end of the sentencing, defendant stated that “[w]e left a matter on the table, your Honor, that the investigator and I was not able to see those DVDs, and I want it on the record.” Defendant went on: “And I did not speak with Mr. Stein [a deputy district attorney] this morning. One of the conditions of the deal that we hammered out that I was able to see those DVDs, which I did not see yet.” Defendant stated, “I just want to make sure that’s on the record.”

Defendant filed a motion to vacate judgment on August 24, 2018, on the ground that he had not gotten sufficient investigative assistance from a court appointed investigator while he was in custody and had not obtained from the investigator the “remaining discovery” in the case, which amounted to “ineffective assistance of counsel;” and that there was unspecified “newly discovered evidence” that was exculpatory, and if he had been aware of this evidence, “it is substantially more likely than not that he would not have entered his plea” of no contest. The motion was denied at a hearing on September 10, 2018, without comment by the trial court.

Defendant, representing himself, filed a notice of appeal on September 13, 2018. He did not request a certificate of probable cause. On February 11, 2019, defendant’s

² The trial court refers to this as a “Cruz waiver,” based on *People v. Cruz* (1988) 44 Cal.3d 1247, 1254, footnote 5.

court appointed counsel for this appeal³ filed an application for leave to seek a certificate of probable cause in Alameda County Superior Court (Application), which was opposed by the Attorney General. This court denied the Application on March 11, 2019. On April 11, 2019, defendant (through counsel) filed a petition for review “based on the Court of Appeal order filed on 3/11/19”. Our Supreme Court denied review on May 15, 2019.

REVIEW

We have reviewed the record on appeal for any arguable issues. Defendant waived his right to counsel. Before accepting defendant’s change of plea, the trial court made sure defendant understood the terms of the plea agreement, the consequences of his plea and the Constitutional rights he was giving up. The record provides a factual basis for defendant’s plea. The sentence was completely consistent with the plea agreement. There were no legal errors in the sentencing. Defendant never asked the trial court to issue a certificate of probable cause. As set forth above, this court has already denied defendant’s application in that regard, and the Supreme Court has denied review of our order.

We conclude there are no arguable issues within the meaning of *People v. Wende*, *supra*, 25 Cal.3d 436. The judgment is affirmed.

³ Defendant has been represented by counsel in this court and in the Supreme Court.

Miller, J.

We concur:

Kline, P.J.

Stewart, J.

A155375, *People v. Gaines*